

# Department of Veterans Affairs

# Memorandum

Date: January 31, 2017

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Improper Telework and Ineffective Supervision, Nebraska-Western Iowa Health Care System, Omaha, NE (2014-04690-IQ-0218)

To: Director, Nebraska-Western Iowa Health Care System

## Purpose

On August 19, 2014, VA OIG Administrative Investigations Division received allegations that Dr. [REDACTED], [REDACTED], Nebraska-Western Iowa Health Care System (NWIHCS), allegedly allowed Ms. [REDACTED], Physician Assistant (PA), to work remotely and on an intermittent schedule for her personal convenience. Allegedly, Ms. [REDACTED] continued to receive full time pay as a Physician Assistant while performing part time telework duties and only working 3-4 shifts a year as a medical provider.

## Objective, Scope, and Methodology

To assess these allegations, we interviewed Dr. [REDACTED] and Ms. [REDACTED]. We also reviewed email and personnel records, Federal laws and regulations, and VA Policy.

Ethical Standards for Employees of the Executive Branch require employees to be impartial and not give preference to any individual. 5 CFR § 2635.101. VA policy states that employees selected for telework must occupy a suitable position. VA Handbook 5011/26, Part II, Chapter 4, Paragraph 7. VA policy also states that non-clinical duties assigned to Title 38 employees are to be reduced to a minimum and assigned to Title 5 employees. VA Handbook 5005, Part III, Appendix N (April 15, 2002).

VA policy further states that the purpose of intermittent appointments under 38 U.S.C § 7405(a)(1) is to permit the use of qualified individuals on a part-time or intermittent basis when necessary to alleviate recruitment difficulties. It also states that an intermittent appointment is appropriate to use in all cases where VHA work requirements do not support employment on a full-time basis, and an intermittent appointment is to be used when the need for services is of such a nature it is not possible or desirable to establish a regular and prearranged schedule. VA Handbook 5005/19, Part II, Chapter 3, (January 12, 2007).

## Results

### Issue: Dr. [REDACTED] Did Not Engage in Preferential Treatment

#### Ms. [REDACTED] Work Schedule

Personnel records reflected that Ms. [REDACTED] began working at the VA NWIHCS in February 2009 as a full-time emergency room PA. On July 17, 2011, she requested to change to an intermittent schedule. Ms. [REDACTED] told us that the 60 mile commute between her residence in Lincoln, NE, and the medical center in Omaha, NE, caused a personal hardship after the birth of her child. As a result, she told Dr. [REDACTED] that she intended to resign her position. Instead, Dr. [REDACTED] recommended that she telework and convert to an intermittent schedule.

Dr. [REDACTED] confirmed that he recommended Ms. [REDACTED] telework. Dr. [REDACTED] said that he and Dr. [REDACTED], [REDACTED], approved Ms. [REDACTED] intermittent schedule, as they valued her performance.

Ms. [REDACTED] told us that, in her intermittent position, she worked weekends and holidays at the NWIHCS when the only other emergency room PA was off duty. The hours for which she worked as an emergency room care provider were not in dispute during the course of this investigation.

At the heart of this investigation was Ms. [REDACTED] additional duty of preparing, while teleworking, the medical center's duty schedule which included some 25 "moonlighters." In this context, "moonlighters" were part-time physicians responsible for supplementing the emergency room's full-time employees. According to Ms. [REDACTED], both her schedule and the number of hours worked were based on "... holes in the schedules or if [she was] going to have trouble finding coverage ..." It was frequently necessary to make scheduling changes due to sick calls, departures, or new hires.

Dr. [REDACTED] told us that he did not set the number of hours or when Ms. [REDACTED] worked. Rather, because her "job [was] to keep us staffed 24/7," her schedule was dictated by constantly evolving staffing issues. He stated that she was "essentially on call 24/7." Ms. [REDACTED] told us she told the moonlighters, full-time physicians, her director, and her timekeeper that she was accessible 24/7 via her Gmail account and/or personal cell phone.

Mr. [REDACTED], Administrative Officer, told us that Ms. [REDACTED] was "an over-qualified person" doing scheduling work underutilizing her professional education and training. He believed her education and training could be better spent in a patient care setting. According to Mr. [REDACTED], her situation drew "a lot of criticism as being wasteful and inefficient at a time when resources [were] limited and hiring additional staff [was] often time consuming and slow." He said that she received a title 38 salary, compensated at a GS-12, step 10, to perform clerical work while teleworking and only performing patient care services intermittently.

Ms. [REDACTED] time and attendance (T&A) showed that she worked 144 hours in 2012; 196 hours in 2013; and 52.5 hours from January 19 to September 16, 2014. She teleworked anywhere from 30 minutes to 4 hours per pay period and occasionally worked 10 to 15 hours per pay period at the NWIHCS. On average, her telework scheduling duties averaged the equivalent of about one shift per month. Dr. [REDACTED] asked Ms. [REDACTED] about returning to a full-time schedule and she responded that "...I have no desire to return full time ..." Ms. [REDACTED], Supervisory HR Specialist, told us that Ms. [REDACTED] fulltime position was backfilled about a year after she started her intermittent schedule.

*Ms. [REDACTED] Outdated Telework Agreement and Use of Her Personal Equipment*

VA policy states that eligible employees interested in telework should submit a telework request. Upon receipt, supervisors must consider the request and determine whether telework is an appropriate work arrangement. Upon completion of the mandatory telework training course, as well as the Information Security Awareness Training and VHA Privacy Policy Training, the employee must complete VA Form 0740, Telework Agreement. It is recommended that telework agreements be reviewed at least annually to determine the impact on work operations. VA Handbook 5011/26, Part II, Chapter 4 (August 9, 2013). VA policy also states that an employee selected for telework must occupy a suitable position, and the supervisor is responsible for determining the requirements and expectations of a telework arrangement to include the appropriate number of days. Further, the employee must complete a Telework Self-Certification Safety Checklist (VA Form 0740b), and submit it to their immediate supervisor. VA Handbook 5011/5, Part II, Chapter 4 (September 22, 2005).

Dr. [REDACTED] approved Ms. [REDACTED] telework agreement on September 26, 2011. However, we were unable to locate agreements for the time frame from 2012 to 2015. Ms. [REDACTED] said she only remembered signing one agreement. Dr. [REDACTED] said he only approved one agreement and did not know that it had to be reviewed annually. An HR Specialist told us that Ms. [REDACTED] position had a telework code of "Z" in 2014, meaning that her position made "teleworking impossible." However, subsequent conversations with the same HR Specialist indicated that, although Ms. [REDACTED] telework code was originally set to the default of "Z," such codes can be changed upon the accomplishment of a written memorandum.

In subsequent conversations, the HR Specialist clarified that there is no per se prohibition against PAs teleworking, so long as management agrees that appropriate work is available. He also noted that Ms. [REDACTED] telework code has since been converted to "X," meaning that management has since remedied the administrative error. Finally, evidence indicates that, even prior to the conversion of the position to the "X" code, Dr. [REDACTED], Dr. [REDACTED], and Mr. [REDACTED] knew and approved of her telework arrangement.

Ms. [REDACTED] 2011 telework agreement showed that she would work 2 to 3 days per pay period and that she needed a computer and a cell phone. Ms. [REDACTED] stated that "I feel by having a phone [and] email where I can be reached at any time will make me very

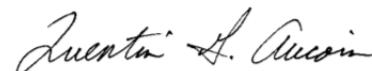
accessible to my customer, supervisor, [and] co-workers..." Ms. [REDACTED] told us that she did not have VA-issued equipment when she teleworked. As a result, she used her personal computer to prepare the schedules in a Google calendar, her personal Gmail account to send it to the appropriate parties, and her personal cell phone to make VA-related calls. Ms. [REDACTED] told VA employees to contact her on her personal email account because she only reviewed her VA emails when she worked weekends and holidays. Mr. [REDACTED], Facility Chief Information Officer at NWIHCS stated that he did not find any evidence that Ms. [REDACTED] had a VA issued computer or cell phone.

Ms. [REDACTED] told us that she was the only PA under Dr. [REDACTED] supervision that teleworked without a VA issued computer, cell phone, current telework agreement, and with an unsuitable telework code. She said that she was the first PA they hired and that this situation was the result of "ignorance...but nothing was ever done secretly or maliciously..." Dr. [REDACTED] told us that that neither he nor Ms. [REDACTED] intentionally did anything wrong. He said that Ms. [REDACTED] had done a great job and he felt "uncomfortable having to explain all this about somebody who's doing a great job."

## Conclusion

We did not substantiate that Dr. [REDACTED] engaged in preferential treatment when he approved Ms. [REDACTED] intermittent and part-time schedule. Because we did not identify any other PAs requesting such an arrangement, we necessarily also did not find any evidence that she was treated differently. We also found no evidence of improper motivation. Likewise, there was no evidence that Ms. [REDACTED] acted improperly in claiming compensation for the part-time work which she performed. Rather, the evidence indicates that she was performing scheduling duties remotely the equivalent of only about one shift per month. To the extent that paying Ms. [REDACTED] to perform those limited duties on a part-time telework basis may have helped obviate the need to hire a full-time employee with benefits, the arrangement was not improper.

However, we also found that Dr. [REDACTED] failed with regard to the following administrative tasks with regard to Ms. [REDACTED]: (1) he did not maintain proper up-to-date documentation regarding Ms. [REDACTED] part-time telework position (e.g., a current telework agreement); (2) he did not take the necessary steps to convert Ms. [REDACTED] position to a code "X" position; and (3) he did not ensure that the proper information technology equipment (e.g., Government Blackberry and computer) was issued to Ms. [REDACTED]. This appears to have been due to administrative error rather than any bad faith. Further, local management has indicated its intent to remedy the above issues. We are therefore closing this investigation with this memorandum.



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